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Utah Court of Appeals

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Marcus Taylor; Labrum and Taylor; Attorney for Appellant.

Kay L. McIff; Olsen, McIff and Chamberlain; Attorney for Respondent.

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870334-CA IN THE UTAH COURT OF APPEALS

BOBBIE C. DICKINSON,

Plaintiff - Appellant,

vs.

SHERRIL COTTRELL DICKINSON,
nka SHERRIL HENRIE,

Defendant - Respondent

*

*

*

*

*

*

Case No. 870334-CA

Category No. 15

BRIEF OF APPELLANT

APPEAL FROM AN ORDER OF THE SIXTH JUDICIAL
DISTRICT COURT OF SEVIER COUNTY, THE HONORABLE
DON V. TIBBS, DENYING APPELLANT'S PETITION
TO MODIFY DECREE OF DIVORCE

Marcus Taylor
LABRUM & TAYLOR
108 North Main Street
P.O. Box 724
Richfield, Utah 84701
Telephone: (801)896-6484

Attorney for Appellant

Kay L. McIff
OLSEN, McIFF & CHAMBERLAIN
225 North 100 East
P.O. Box 100
Richfield, Utah 84701
Telephone: (801)896-4461

Attorney for Respondent

IN THE UTAH COURT OF APPEALS

BOBBIE C. DICKINSON,	*	
	*	
Plaintiff - Appellant,	*	Case No. 870334-CA
	*	
vs.	*	
	*	
SHERRIL COTTRELL DICKINSON,	*	Category No. 15
nka SHERRIL HENRIE,	*	
	*	
Defendant - Respondent	*	

BRIEF OF APPELLANT

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P.O. Box 724
Richfield, Utah 84701
Telephone: (801)896-6484

Attorney for Appellant

Kay L. McIff
OLSEN, McIFF & CHAMBERLAIN
225 North 100 East
P.O. Box 100
Richfield, Utah 84701
Telephone: (801)896-4461

Attorney for Respondent

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IN THE UTAH COURT OF APPEALS

BOBBIE C. DICKINSON,	*	
	*	
Plaintiff - Appellant,	*	Case No. 870334-CA
	*	
vs.	*	
	*	
SHERRIL COTTRELL DICKINSON,	*	Category No. 15
nka SHERRIL HENRIE,	*	
	*	
Defendant - Respondent	*	

JURISDICTION

This Court has jurisdiction to entertain this appeal pursuant to UCA §78-2a-3(2)(g).

NATURE OF PROCEEDINGS

Following a decree of divorce between the parties hereto, Plaintiff petitioned the District Court to modify the decree of divorce so as to relieve him from the obligation to satisfy a second real estate mortgage owing against the residence of the parties which had been awarded in full to Defendant. The District Court denied the petition, finding no substantial change in material circumstances. Plaintiff appeals the order denying his petition.

STATEMENT OF ISSUES

The broad issue which is presented for review is whether the District Court erred in failing to find a sufficient change of circumstances so as to justify a modification of the decree of divorce. Central to that general issue, Plaintiff

asserts that (a) the Court erred in failing to find that his annual income had decreased substantially, and (b) in failing to find that Defendant's income had increased due to her receipt of rental income from the home which she was awarded by the decree of divorce.

DETERMINATIVE CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES, AND RULES

This appeal does not call for any review or analysis of constitutional provisions, ordinances or other rules. However, the provisions of UCA §30-3-5, do provide broad statutory guidance. Subsection (3) of that statute reads as followings:

The Court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property as is reasonable and necessary.

STATEMENT OF THE CASE

This appeal presents issues which arose between the parties after a decree of divorce in the District Court. The case was tried on October 30, 1985 and a decree followed. During a number of post-decree hearings, the parties litigated issues of (a) child custody, (b) termination of alimony, (c) claims for post-decree attorney's fees, and (d) whether Plaintiff should be relieved from the obligation to pay a second real estate mortgage owing to Zions First National Bank

which encumbered the home property that was awarded to Defendant in the original decree. Hearings were conducted by the Court on September 10, 1986, May 13, 1987, and May 27, 1987, to accomplish the foregoing. The only issue which survives those prolonged proceedings is that surrounding Plaintiff's obligation to satisfy the real estate mortgage to Zions First National Bank. The District Court denied relief to the Plaintiff in that regard, finding an insufficient change in the circumstances of the parties. Plaintiff appeals that decision, with no cross appeal being pursued by Defendant.

IDENTIFICATION OF TRANSCRIPTS

Four transcripts are included with the record on appeal. One transcript reports the original trial proceeding, and the other three transcripts report the three post-trial evidentiary hearings. To assist the Court, the trial transcript will be referred to as the usual "TR" designation, and the other transcripts will be referred to by "T" followed by the date of the hearing. For example, the transcript which reports the May 27, 1987 hearing will be designated as "T 27May87".

STATEMENT OF FACTS

The decree of divorce between these parties addressed issues of (a) division of personal property, (b) award of residence, and (c) two real estate mortgages owing against the

residence. Certain firewood was divided evenly between the parties without any designation of value (Record 33). The balance of the personal property was divided between the parties pursuant to a proposed division submitted by Plaintiff (Record 32 and 33). Other than the firewood, the various values of the personal property was set forth in Exhibits 2 and 5 which were received by the Court (TR 4). Plaintiff offered testimony in confirmation of those values (TR 26 and 27). The value of the home was placed at \$55,000.00 (Exhibit 2), and that value was acknowledged by Defendant (T 44 13May87). Those values were never disputed. Defendant was ordered to assume the first real estate mortgage owing against the residence to Farmers Home Administration in the approximate sum of \$18,500.00 (Record 32), and Plaintiff as ordered to assume the second real estate mortgage owing on the home to Zions First National Bank in the approximate sum of \$18,000.00 (Record 33). Defendant was awarded the home itself, Plaintiff not receiving any interest therein (Record 32).

The decree of divorce then results in a property division as follows:

<u>To The Plaintiff</u>	<u>To The Defendant</u>
Personal property \$4,850.00	Personal Property \$ 8,750.00
	Residence 55,000.00
TOTAL \$4,850.00	TOTAL \$63,750.00

Defendant's obligation to assume the mortgage to Farmers Home Administration would reduce the value of her property in the amount of the mortgage, \$18,500.00, such that the value of the property received by her would then be \$45,250.00. Plaintiff's obligation to pay the second mortgage to Zions First National Bank would place the value of the property awarded to him at the negative figure of -\$13,150.00. The Court found Plaintiff's earnings at \$25,000.00 per year, and the earnings of Defendant at \$2,100.00 per year (Record 27). Plaintiff's child support obligation was fixed at \$300.00 per month for two of the children, and his alimony obligation to Defendant was set at \$300.00 per month for a period of twenty-four months (Record 27).

After the Dickinsons had divorced, Wallace K. Henrie and Gloria Henrie obtained a divorce from one another, and Mr. Dickinson married the prior Mrs. Henrie (Gloria), and Mr. Henrie married the prior Mrs. Dickinson (Sherril) (T 10 and 11 27May87).

Mr. Henrie was a seven year employee of Zions First National Bank (TR 11 and 12 27May87), and had gross income for the year of 1986 of \$28,438.29 (TR 12 and 13 27May87). Defendant's income for 1986 was a gross of \$2,728.62 from wages (TR 13 27May87), but that income did not reflect child support income nor income from rents on the home which she was awarded

in the divorce. Following Defendant's marriage to Mr. Henrie, she moved into his home in Richfield, and placed tenants in the Glenwood home, the residence which she was awarded in the Dickinson divorce (T 29 27May87). Those tenants commenced occupancy in June of 1986 and made monthly rental payments of \$260.00 each under a two year contract (T 30 27May87). Defendant continued to pay the monthly installment on the mortgage to Farmers Home Administration of \$162.00 (T 31 27May87).

Plaintiff's present wife (the prior Mrs. Henrie) was employed at the time of the May 27, 1987 hearing with net monthly earnings of \$850.00 (T 39 27May87). Plaintiff's gross income for 1986 was \$17,333.92 (T 18 27May87), and he had no other sources of income (T 19 27May87). Plaintiff's income of \$25,000.00 per year which was found by the Court at the time of the decree had resulted in bonuses or commissions which he had earned in addition to his ordinary wage (T 17 and 18 27May87).

On March 18, 1987, Michael Henrie, who resided in the Dickinson household, turned eighteen years of age which terminated Mr. Henrie's support obligation of \$165.00 per month to the then present Mrs. Dickinson (T 46 13May87). Michael was a senior in high school at that time (T 47 13May87). Mr. Dickinson continued to support Michael as a member of his household (T 58 13May87).

By the time of the May, 1987 hearing, the Dickinsons had overspent their income for the previous year by approximately \$3,000.00 (T 48 13May87)(See details in Exhibit 8 received at the May 13, 1987 hearing). That deficit was financed by the Dickinsons by use of a credit card (T 54 13May87).

Plaintiff then argued the following changes in circumstances to support his petition (Record 164 - 167):

a. Defendant was remarried and was supported by her present husband who had gainful employment at Zions First National Bank with annual earnings in excess of \$28,000.00.

b. Defendant personally had an income increase from \$2,100.00 as found by the Court at the time of the decree to the sum of \$2,728.62 for the calendar year of 1986.

c. Defendant had let the Glenwood home to tenants at a monthly rental of \$260.00, for an annual income increase of \$3,120.00.

d. Plaintiff's income had decreased from \$25,000.00 in 1985 to \$17,333.92 in 1986.

e. Child support of \$165.00 per month to the Dickinson household for Michael Henrie had terminated, although Plaintiff continued to have the actual support obligation for that child who was at the time a senior in high school.

SUMMARY OF ARGUMENTS

The Court erred in finding that Plaintiff's income had not decreased. Plaintiff had income of \$25,000.00 for the year of 1985, but because of the absence of bonuses and commissions during 1986, his income decreased to \$17,333.92, a difference of approximately \$8,000.00. Plaintiff testified as to that amount of income, and offered tax returns and other records in verification. Defendant offered nothing to controvert that evidence and the finding of the Court that Plaintiff's income had not decreased was totally lacking in any evidentiary basis.

Defendant's income had increased because of her rental of the Glenwood home, a positive cash flow of \$3,120.00 per year, but the Court erred in not giving that increase in income the weight and significance to which it was entitled. The Court viewed the existence of maintenance, insurance and property taxes as offsetting that income, but failed to realize that those expenses existed before the placing of tenants in the home.

The remarriage of Defendant, the decrease in Plaintiff's income, the increase in Defendant's income, and Plaintiff's continued support of Michael Henrie after he turned eighteen years of age, combined to show significant changes in the circumstances of the parties as to warrant the relief requested by Plaintiff, and the Court committed error in

failing to find a material change of circumstances.

ARGUMENT

POINT I -- THE COURT COMMITTED ERROR IN
FAILING TO FIND THAT PLAINTIFF'S INCOME
HAD DECREASED BY \$8,000.00

At the time of the divorce trial the Plaintiff had wage income combined with bonus and commission income which totalled approximately \$25,000.00, and the trial Court correctly found that to be his annual earnings. Plaintiff testified that the year in question, 1985, was a good year for his employment and that he had a number of commission jobs. However, the year of 1986 had not produced any commission jobs, and he was relegated to his fixed wage which produced a gross of \$17,333.92. That figure was verified by Plaintiff's 1986 W-2 tax statement. Defendant did not offer any evidence to controvert the testimony and documents which Plaintiff had offered to show his 1986 income. Defendant did acknowledge that she could have subpoenaed Plaintiff's employment records, his bank records, take his deposition, or produce his tax records, but that she had not done so (T 36 and 37 27May87).

In the face of foregoing, the trial Court refused to find that Plaintiff's income had decreased (T 55 27May87). The court justified that conclusion by stating that Plaintiff had

income in 1985 which was in addition to his W-2 statement income, without any explanation as to how that would impact income for 1986. In other words, the trial Court relied upon evidence received at the time of the divorce trial (October 30, 1985) and totally ignored the absence of any evidence to discredit the testimony and documentary evidence which Plaintiff offered to support his claim at the May, 1987 hearings. The "clearly erroneous" standard is met when there is nothing in the evidence to support the finding in question.

POINT II -- THE COURT ERRED IN ITS FAILURE TO
FIND THAT DEFENDANT'S INCOME HAD INCREASED BY
\$3,120.00 PER YEAR AS A RESULT OF RENTALS
RECEIVED FROM THE GLENWOOD HOME

At the time of the divorce of the parties the Defendant was residing in the Glenwood home. She was awarded that asset in full. She then married Mr. Henrie, moved to his home in Richfield, and placed tenants in possession of the Glenwood home at a rental of \$260.00 per month. The lease began in June of 1986, and would run for a period of two years. Defendant had the obligation to pay insurance and taxes for the Glenwood home, and would have had ordinary maintenance expenses. Those items exist independent of a letting of the home to tenants. Defendant had those obligations when she resided in the home, and they continued after she ceased to reside at that residence.

The cash flow result is obvious. Her annual income increased by the sum of \$3,120.00. Despite that obvious cash flow change for the better, the Court found that Defendant was not receiving any "appreciable disposable cash." (Record 171)

POINT III -- THE COURT ERRED IN FAILING TO FIND
A MATERIAL CHANGE OF CIRCUMSTANCES SO AS TO
JUSTIFY A MODIFICATION OF THE DECREE

Plaintiff's income from 1985 to 1986 had decreased by \$7,667.00, primarily because he was unable to secure any commission or bonus projects. Defendant's income had increased \$3,120.00 as a result of rentals received by her from the Glenwood home. In addition, her wage had increased from \$2,100.00 in 1985 to \$2,728.00 in 1986, the difference being \$628.00. Defendant had remarried with her present husband earning \$28,000.00 per year. Plaintiff had remarried and his current spouse was earning approximately \$12,000.00 gross per year. Michael Henrie who was supported by the Dickinson household turned eighteen on March 18, 1987, resulting in a monthly decrease of income to the Dickinson household of \$165.00. Furthermore, the mortgage debt owing to Zions First National Bank had been refinanced so as to reduce the monthly installments from \$399.00 per month to \$218.00 per month, the latter figure being less the rental income which Defendant was realizing from her tenants.

UCA §30-3-5 grants continuing jurisdiction for subsequent changes with reference to distribution of property, or with reference to support orders, among other matters. Changes in relative incomes will justify the termination of alimony, Haslam v. Haslam, Utah 657 P.2d 757 (1982). Even in the face of a stipulated waiver of alimony, a change in circumstances will justify the modification of a decree so as to impose upon one party the obligation to pay alimony to the other, Kinsman v. Kinsman, Utah 73 UAR 110 (January 12, 1988). A stipulated property settlement is likewise subject to modification, but would require compelling reasons to do so, Land v. Land, Utah 605 P.2d 1248 (1980). Although greater restraint is imposed in modifying a property distribution when compared with changes in continuing child and spousal support orders, divorce Court directives for one party to assume and satisfy a particular debt and hold the other party harmless are often times viewed as in the nature of spousal support versus property settlement and distribution, Holt v. Holt, Utah 672 P.2d 738 (1983); Beckmann v. Beckmann, Utah 685 P.2d 1045 (1984); Erickson v. Verardall, Utah 437 P.2d 210 (1968). In the instant matter, the burden to satisfy the mortgage to Zions First National Bank, or relief from that burden, would directly bear upon the income and expenses of the parties, and consequently their support. The real test should turn upon

income resources when compared with income needs. The whole picture is either "money in" or "money out" and a labeling of cash flow as support or property does not automatically solve the difficult questions which are presented by cases of this nature. Thus, Plaintiff contends that the mortgage obligation should be treated in the context of spousal support and adjudicated by a less rigorous standard than would apply to a true property division situation.

Even if we are to view the decreed obligation for Plaintiff to assume and satisfy the Zions First National Bank mortgage as strictly a property settlement, the facts of the instant matter justify and warrant a finding that there have been substantial changes in the circumstances of the parties. Facts of less magnitude have been found to be ample, Teece v. Teece, Utah 715 P.2d 106 (1986). In a case of near parallel facts to the instant matter the Utah Supreme Court observed that the moving party had presented a prima facie case of changed circumstances, Chandler v. West, Utah 610 P.2d 1299 (1980). In Chandler, the parties had divorced pursuant to a written stipulation which provided for an award of the parties home to the Plaintiff (wife). The home was valued at \$46,000.00, and the Defendant (husband) was ordered to make all mortgage payments on the premises. The mortgage indebtedness was less than \$14,000.00. The husband in Chandler was also

ordered to pay alimony of \$300.00 per month. The decree was dated February 9, 1977. In July of that year the wife sold the home for \$60,000.00 and remarried within weeks of the sale of the home. The husband then terminated mortgage payments and order to show cause proceedings then litigated the issue. The husband claimed that the remarriage of the wife and her sale of the home constituted a material change of circumstances so as to justify a modification of the decree to relieve him from the obligation to retire the mortgage. The District Court viewed the obligation on the part of husband to pay the mortgage part of the property settlement between the parties and ordered husband to continue making payments. On appeal the Utah Supreme Court observed that property settlements "are entitled to a greater sanctity than alimony and support payments" but stated that they are not sacrosanct nor beyond the equitable power of the Court to modify. The court in Chandler also correctly observed that the order to pay the mortgage obligation was not a typical property distribution matter, viewing it in a class by itself. At page 1300 of the Chandler opinion, the Court stated:

Clearly it was within the power of the trial Court to modify or eliminate the obligation to make those payments if the obviously changed circumstances under traditional equity standards so require.

The Court then remanded the case because of the

absence of needed findings of fact, but commented that husband had presented "a prima facie case of changed circumstances which basically raises a serious questions as to fairness and equity of continuing the financial obligations of one party..."

In the case at bar, the unfairness of the situation is crystalized when the original decree is used as a starting point. Defendant came out of the marriage with assets having a total value of \$63,750.00, subject to a mortgage obligation of \$18,500.00. Plaintiff came out of the marriage with assets totalling \$4,850.00, and a mortgage obligation of \$18,000.00. In the face of that great disparity, Plaintiff's income has decreased substantially, whereas Defendant has had some increase to her income. Furthermore, Defendant's rental income from the home is ample to meet the continuing mortgage payments, whereas Plaintiff is unable to meet his continuing monthly expenses based upon his reduced income. Even when the income of his current wife is brought into the picture.

A final comment is needed regarding the continued support by Plaintiff of Michael Henrie, the eighteen year old teenager, who resides in his home. It is proper to consider that fact. Obligations for a "new family" or a stepchild are relevant in resolving issues of the type presented by this appeal, Openshaw v. Openshaw, Utah 639 P.2d 177 (1981). Michael Henrie had continuing support needs, and the reaching

of his eighteenth birthday in March of 1987 did not alter those needs.

CONCLUSION

Plaintiff made a prima facie showing of a substantial change in the circumstances of the parties, and the court erred in failing to so find. The Court should reinstate Plaintiff's petition and remand the matter to the District Court for the purpose of considering appropriate modifications to the decree.

DATED this 1st day of April, 1988.

LABRUM & TAYLOR

By 
MARCUS TAYLOR

MAILING CERTIFICATE

I herewith and hereby certify that four copies of the foregoing BRIEF OF APPELLANT were placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid, this 1st day of April, 1988, addressed as follows:

Kay L. McIff, Esq.
OLSEN, McIFF & CHAMBERLAIN
P.O. Box 100
Richfield, Utah 84701

Mary Taylor

ADDENDUM

FINDINGS AND CONCLUSIONS IN RE PETITION TO MODIFY
ORDER DENYING PETITION TO MODIFY DECREE
NOTICE OF APPEAL

JUL - 7 1987

KAY L. McIFF
OLSEN, McIFF & CHAMBERLAIN
Attorneys for Defendant
151 North Main Street
P. O. Box 605
Richfield, Utah 84701
Telephone: 801 896-5441

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY
STATE OF UTAH

BOBBIE C. DICKINSON,	:	
	:	FINDINGS AND CONCLUSIONS
Plaintiff,	:	IN RE PETITION TO MODIFY
	:	
vs.	:	
	:	
SHERRIL COTTRELL DICKINSON,	:	
nka SHERRIL HENRIE,	:	
	:	Civil No. 9602
Defendant.	:	

THIS MATTER having come before the Court on the 27th day of May, 1987, on the Plaintiff's petition for modification, and the Court having heard the evidence adduced, and counsel having stipulated that the Court could consider evidence previously introduced herein, and particularly evidence introduced at a hearing held on May 13, 1987, and having heard the arguments of counsel and being fully advised in the premises, now enters the following

FINDINGS OF FACT

1. Plaintiff's obligation to pay a certain debt at Zions First National Bank secured by a second mortgage on a home

in Glenwood, Utah, awarded to Defendant was part and parcel of the overall property settlement, which the Court decreed at the time of granting the divorce herein, and was not by way of support payment to Defendant.

2. At the time of entry of the original decree herein, Plaintiff was ordered to pay to Defendant the sum of \$300.00 per month child support for two children, the sum of \$300.00 per month alimony, together with the payment required to retire the debt at Zions First National Bank.

3. That by virtue of Defendant's remarriage, Plaintiff's alimony obligation of \$300.00 per month has been terminated.

4. That Defendant renegotiated the debt at Zions Bank, which has inured to the benefit of Plaintiff, and his monthly obligation has been reduced from \$399.00 per month to some \$218.00 per month.

5. That Defendant has remarried, and is now supported by her present husband, who has a gross annual earning capacity of some \$28,438.00.

6. That Plaintiff has remarried, and his present wife has a gross annual earning capacity of \$12,000.00.

7. That Plaintiff's reportable income, as evidenced by withholding statements supplied by his employer, has at all material times been approximately \$17,000.00. The evidence initially submitted to this Court by Plaintiff at the time of the original divorce hearing indicated an estimated 1985 income of

\$16,894.88. Plaintiff's reportable income for the year 1986 was \$17,333.92.

8. At the time of the original divorce hearing, Plaintiff admitted that he had received cash payments from his employer beyond what was reflected in the exhibits he had introduced, and based thereon the Court found that Defendant had a gross earning capacity of \$25,000.00 annually. Plaintiff continues to work for the same employer, and the Court has not been convinced that there has been any substantial change in Plaintiff's earning capacity.

9. During the year 1986, Plaintiff and his present wife had net disposable income of some \$34,539.00.

10. That since entry of the decree herein, Defendant's income has increased in a modest amount from \$2,100.00 to some \$2,728.00.

11. That subsequent to the entry of the original decree of divorce, Plaintiff married one Gloria Henrie, whose former husband thereafter married the Defendant herein, resulting in Plaintiff paying child support to Defendant while at the same time Plaintiff's present wife receives child support from Defendant's present husband.

12. That until April of 1987, Plaintiff's present wife received child support from her former husband of \$165.00 per month for each of three children for a total of \$495.00. At the same time, Plaintiff paid to his former wife the sum of \$150.00 per month per child for two children for a total of \$300.00. In

April of this year, Plaintiff's wife's oldest child attained majority, and, accordingly, she now receives payment for two children at the rate of \$165.00 each, for a total of \$330.00. At the same time, Plaintiff continues to pay out for two children the sum of \$300.00.

13. At the time of the entry of the original divorce decree, Defendant occupied the home awarded to her and had the use and benefit thereof. Upon her remarriage, she has rented the home and receives therefrom the sum of \$262.00 per month. However, she remains obliged to satisfy the first mortgage and to pay taxes, insurance and upkeep, the combined monthly cost of which approximates the rental payment received, so that it provides no appreciable disposable cash.

14. Each party should bear his/her own costs.

CONCLUSIONS OF LAW

Plaintiff has failed to prove a sufficient material change of circumstances to warrant this Court upsetting the property settlement originally decreed.

DATED this 13 day of June, 1987.



 DON V. TIBBS
 DISTRICT COURT JUDGE

AFFIDAVIT OF MAILING

I hereby certify that a full, true and correct copy of the above and foregoing FINDINGS AND CONCLUSIONS IN RE PETITION TO MODIFY was placed in the United States mail at Richfield,

Utah, with first-class postage thereon fully prepaid on the
2nd day of June, 1987, addressed as follows:

Mr. Marcus Taylor
P. O. Box 724
Richfield, Utah 84701

Trudy Christensen

KAY L. McIFF
OLSEN, McIFF & CHAMBERLAIN
Attorneys for Defendant
151 North Main Street
P. O. Box 605
Richfield, Utah 84701
Telephone: 801 896-5441

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY
STATE OF UTAH

BOBBIE C. DICKINSON,	:	
	:	ORDER DENYING PETITION
Plaintiff,	:	TO MODIFY DECREE
	:	
vs.	:	
	:	
SHERRIL COTTRELL DICKINSON,	:	
nka SHERRIL HENRIE,	:	
	:	Civil No. 9602
Defendant.	:	

THIS MATTER having come before the Court on the petition of the Plaintiff to modify the decree of divorce herein, and the matter having come before the Court for hearing on May 27, 1987, and the court having heard the evidence and arguments, and having entered findings of fact and conclusions of law and being fully advised in the premises, orders as follows, to-wit:

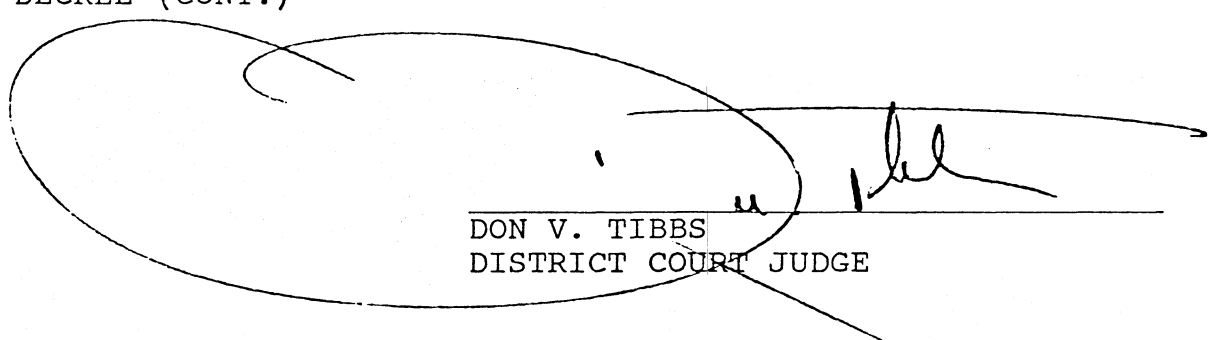
Plaintiffs petition to modify the decree is hereby denied, and it shall remain in force and effect as originally entered.

DATED this 1st day of June, 1987.

filed
7-7-87

DICKINSON VS. DICKINSON
CIVIL NO. 9602

ORDER DENYING PETITION TO
MODIFY DECREE (CONT.)



DON V. TIBBS
DISTRICT COURT JUDGE

AFFIDAVIT OF MAILING

I hereby certify that a full, true and correct copy of the above and foregoing ORDER DENYING PETITION TO MODIFY DECREE was placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid on the 2nd day of June, 1987, addressed as follows:

Mr. Marcus Taylor
P. O. Box 724
Richfield, Utah 84701

Trudy Christensen

MARCUS TAYLOR (3203)
LABRUM & TAYLOR
ATTORNEYS FOR PLAINTIFF
108 NORTH MAIN STREET
P.O. BOX 724
RICHFIELD, UTAH 84701
(801)896-6484

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY,

STATE OF UTAH

BOBBIE C. DICKINSON,

Plaintiff/Appellant,

vs.

SHERRIL COTTRELL DICKINSON,
nka SHERRIL HENRIE,

Defendant/Respondent.

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NOTICE OF APPEAL

Civil No. 9602

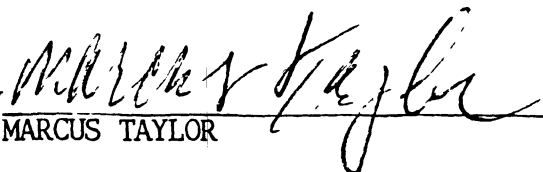
Bobbie C. Dickinson, the Plaintiff/Appellant named aboved, by and through his counsel, Marcus Taylor, hereby gives notice of his appeal to the Utah Court of Appeals from that certain Order Denying Petition to Modify Decree made and entered by the Sixth Judicial District Court of Sevier County, said order bearing date of July 1, 1987, and having been entered by the Clerk of the Court on the date of July 7, 1987.

DATED this 31st day of July, 1987.

LABRUM & TAYLOR

By

MARCUS TAYLOR




Notice of Appeal
Dickinson vs. Dickinson
Civil No. 9602

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MAILING CERTIFICATE

I herewith and hereby certify that a copy of the foregoing NOTICE OF APPEAL was placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid, this 31st day of July, 1987, addressed as follows:

Kay L. McIff, Esq.
OLSEN, McIFF & CHAMBERLAIN
151 North Main
Richfield, Utah 84701


Secretary